IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| GEORGE PILALLIS | : | CIVIL ACTION |
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| v. | : | |
| | : | |
| ELECTRONIC DATA SYSTEMS CORPORATION | : | NO. 97-5662 |

**M E M O R A N D U M**

**Padova, J.** April 27, 1998

Plaintiff George Pilallis ("Plaintiff") brings this action against his former employer, Electronic Data Systems Corporation ("EDS"), seeking recovery of commissions that he claims are due and owing to him by EDS. Before the Court is EDS's Motion for Summary Judgment. For the reasons set forth below, the Court will deny the Motion.

## I. BACKGROUND

Plaintiff was employed by CLS Corporation ("CLS") as the Director of Sales. Pursuant to a written agreement with CLS, Plaintiff received a base salary, plus commissions of 2.5% of the gross revenue received by CLS on contracts that Plaintiff generated for the life of those contracts. (Def.'s Summ. J. Mot. Ex. B.) In March or April 1994, EDS acquired CLS. Plaintiff was offered a position with EDS as a salesperson, which he accepted. On April 12, 1994, Plaintiff entered into a written employment

agreement with EDS. (Id., Ex. D.) Paragraph 2 of the agreement provides as follows: "I agree that my initial compensation with EDS shall be $7,000.00 per hour/month."[1] (Id.) As Defendant correctly points out, "[t]he agreement does not refer to any commissions or any other type of compensation." (Def.'s Mot. at 2.) The agreement also provides in relevant part as follows:

> 4. I understand and agree that my employment at EDS is not for any specified term and that either EDS or I may terminate the employment relationship with or without cause at any time....
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> ***
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> 17. I agree that this agreement may not be modified or amended except by a written instrument executed by me and an authorized officer of EDS.
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> ***
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> 19. This agreement constitutes our entire agreement, and supersedes and prevails over all other prior agreements, understandings or representations by or between the parties, whether oral or written, with respect to the subject matters herein.

(Def.'s Mot. Ex. D.)

After he began working for EDS, EDS continued to pay Plaintiff the 2.5% commissions on the gross revenue generated by his CLS accounts. EDS made these payments to Plaintiff through December 1995, at which time EDS stopped making the payments. Plaintiff worked for EDS until February 15, 1997, when he

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[1]The agreement was a form agreement with a space to fill in the amount of compensation. The form identifies the term of compensation as "hour/month." It was obviously intended that, depending on the circumstances, either the word "hour" or the word "month" would be crossed out. This was not done on Plaintiff's agreement. It is undisputed that Plaintiff was to be paid $7,000 per month.

resigned his employment.

Plaintiff seeks recovery of commissions for the period of January 1996 until February 15, 1997. Plaintiff contends, and EDS denies, that prior to, contemporaneously with, and after the execution of the written employment agreement with EDS, oral promises were made to him by EDS that the 2.5% commissions on CLS accounts would continue to be paid by EDS for the years remaining on the sales contracts that Plaintiff had generated while employed by CLS. (Pl.'s Dep. at 10-12, 14-16, 18-23.) According to Plaintiff, EDS agreed to pay Plaintiff the CLS commissions "as long as the [CLS] contracts were enforced and [Plaintiff] was an employee of EDS." (Id. at 12.)

## II. LEGAL STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" only if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the

nonmoving party, a factual dispute is only "material" if it might affect the outcome of the case. Id.

A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325, 106 S. Ct. at 2554. After the moving party has met its initial burden, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322, 106 S. Ct. at 2552.

## III. DISCUSSION[2]

Although EDS advances a number of arguments in an attempt to defeat Plaintiff's claim for recovery of CLS commissions, the

[2]EDS has applied for permission to file a reply memorandum. The Court will grant EDS's Application for Permission to File a Reply Memorandum. In analyzing EDS's Motion for Summary Judgement, the Court has considered the arguments raised in the reply memorandum.

Court will only address those arguments that are necessary to decide EDS's Motion for Summary Judgment.

A. Plaintiff's Breach of Contract Claim

1. The Parol Evidence Rule

Defendant argues that because Plaintiff's written employment agreement contains an integration clause, the alleged oral promises made by EDS to Plaintiff prior to and contemporaneous with Plaintiff's signing of the written agreement regarding EDS's payment of the CLS commissions are barred by the parol evidence rule.

Under Pennsylvania law,[3] the parol evidence rule is stated as follows:

> Where the alleged prior or contemporaneous oral representations or agreements concern a subject which is specifically dealt with in the written contract, and the written contract covers or purports to cover the entire agreement of the parties, the law is now clearly and well settled that in the absence of fraud, accident or mistake the alleged oral representations or agreements are merged in or superseded by the subsequent written contract, and parol evidence to vary, modify or supersede the written contract is inadmissible in evidence.

Bardwell v. Willis Co., 100 A.2d 102, 104 (Pa. 1953).

Whether a writing is an integrated agreement is a question

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[3]The basis for this Court's jurisdiction is diversity of citizenship pursuant to 28 U.S.C. § 1332. Therefore, Pennsylvania law is controlling. Erie Railrod Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817 (1938). The parol evidence rule is a matter of substantive law. Mellon Bank Corp. v. First Union Real Estate Equity & Mortgage Investment, 951 F.2d 1399, 1404-05 (3d Cir. 1991).

of law for the court to decide. Mellon Bank Corp. v. First Union Real Estate Equity & Mortgage Investment, 951 F.2d 1399, 1405 (3d Cir. 1991)(applying Pennsylvania law). The parol evidence rule "is not applicable if the parties did not intend a written contract to set forth their full agreement." Id. This is true whether or not a contract contains an integration clause. Greenberg v. Tomlin, 816 F. Supp. 1039, 1053 (E.D.Pa. 1993). In Gianni v. R. Russel & Co., 126 A.791 (Pa. 1924), the leading case on Pennsylvania's parol evidence rule, the Pennsylvania Supreme Court set forth the following analysis the court must undertake to determine whether a written agreement is the final and complete expression of the parties' agreement:

> When does the oral agreement come within the field embraced by the written one? This can be answered by comparing the two, and determining whether parties, situated as were the ones to the contract, would naturally and normally include the one in the other if it were made. If they relate to the same subject-matter, and are so interrelated that both would be executed at the same time and in the same contract, the scope of the subsidiary agreement must be taken to be covered by the writing. This question must be determined by the court.

Id. at 792.

The Court has compared the alleged oral agreement with the written agreement. The Court finds that the two agreements do not relate to the same subject matter and are not so interrelated that both would be executed at the same time and in the same contract. Plaintiff's continued receipt of payments for

commissions on contracts he secured while employed at CLS is separate and distinct from his compensation and other terms of employment with EDS.

This conclusion is bolstered by the fact that, as EDS concedes, the written agreement is silent on the issue of payment of CLS commissions to Plaintiff. As a consequence, the oral agreement concerns a subject which is not specifically dealt with in the written agreement. As explained in Gianni,

> The writing must be the entire contract between the parties if parol evidence is to be excluded, and to determine whether it is or not the writing will be looked at, and if it appears to be a contract complete within itself, 'couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent of the engagement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking, were reduced to writing.'

Gianni, 126 A. at 792. Moreover, the integration clause contained in the written agreement is limited to “the subject matters herein” and CLS commissions are not addressed in the written agreement.

The Court finds that the parol evidence rule does not bar the admissibility of evidence of an oral agreement between Plaintiff and EDS for the payment of CLS commissions for the period of January 1996 through December 15, 1997. The Court further finds that genuine issues of material fact exist concerning the existence of a separate oral agreement between

Plaintiff and EDS for the payment of CLS commissions.

2. At-Will Employment

EDS argues in the alternative that even if Plaintiff can prove that an oral agreement exists, Plaintiff was an at-will employee. As such, Plaintiff's employment with EDS could have been terminated and the conditions of his employment could have been altered at any time by EDS.

In making this argument, EDS relies on paragraph 4 of the written agreement. EDS's argument is unavailing because the at-will employment provision in the written agreement has no bearing on the alleged separate oral agreement by EDS to pay Plaintiff the CLS commissions. Although it may be true that EDS could alter the terms of Plaintiff's employment, as embodied in the written agreement, Paragraph 4 of the written agreement does not provide a basis for altering the terms of the oral agreement. Plaintiff has submitted sufficient evidence, for Rule 56 purposes, of a separate oral agreement for payment of CLS commissions.

The Court will deny EDS's Motion for Summary Judgment as to Plaintiff's breach of contract claim.

B. Pennsylvania Wage Payment and Collection Law

Plaintiff's Complaint contains one count brought under Pennsylvania's Wage Payment and Collection Law ("WPCL"), 43 Pa. Stat. Ann. § 260.1, et seq. (West 1992). Commissions fall within the definition of "wages" under the WPCL. 43 Pa. Stat. Ann. § 260.2a. The WPCL does not establish any substantive rights; it just provides a statutory remedy for an employee when the employer breaches a contractual obligation to pay earned wages. Weldon v. Kraft, Inc., 896 F.2d 793, 801 (3d Cir. 1990). "The contract between the parties governs in determining whether specific wages are earned." Id. Therefore, the alleged oral agreement between Plaintiff and EDS will control in determining whether commissions are due to Plaintiff.

Although the WPCL does not establish any substantive rights, Plaintiff may have a claim under the WPCL if he can establish that he is entitled to CLS commissions. The WPCL establishes a statutory scheme for the collection of liquidated damages of an additional 25% of the total amount due, if a good faith contest or dispute of the wage claim does not exist. 43 Pa. Stat. Ann. § 260.10.

EDS argues that "as a matter of law EDS has raised a good faith contest or dispute over Plaintiff's entitlement to the commissions and therefore Plaintiff cannot be awarded liquidated damages even if this Court should ultimately award Plaintiff commission payments." (Def.'s Mot. at 16.) The Court cannot

make this determination at this juncture in the proceedings. Whether EDS acted in good faith or not is the subject of factual dispute. For example, if, as Plaintiff testified in his deposition, EDS repeatedly promised to continue paying Plaintiff CLS commissions in January and February of 1996 and then a month later advised him that there would be no further payments made, this fact, when viewed in light of the entire factual record, may provide a sufficient basis for a finding of bad faith.

The Court will deny EDS's Motion for Summary Judgment as to Plaintiff's WPCL claim.

C. Equitable Claims

In addition to his contract claims, Plaintiff has raised claims for unjust enrichment, equitable estoppel, and promissory estoppel. EDS urges the Court to dismiss Plaintiff's equitable claims as a matter of law "because Plaintiff cannot assert claims in equity when there is a contract covering his compensation." (Def.'s Mot. at 17.)

The Court agrees with EDS that the existence of a contract precludes the right to seek additional compensation based on a quasi-contract theory. Township of Horsham v. Weiner, 255 A.2d 126, 130-31 (Pa. 1969); Third Nat. Bank & Trust Co. of Scranton v. Lehigh Valley Coal Co., 44 A.2d 571, 574 (Pa. 1945)(principle of quasi-contract not applicable to agreements deliberately

entered into by the parties). EDS is incorrect, however, in arguing that the above cases stand for the proposition that Plaintiff cannot plead his equitable claims as alternatives to his breach of contract claim. (Def.'s Reply at 11.) In Schott v. Westinghouse Electric Corp., 259 A.2d 443 (Pa. 1969), the Pennsylvania Supreme Court recognized that a plaintiff could plead a quasi-contract claim as an alternative to a contractual claim.

> [W]e note that this Court has found the quasi-contractual doctrine of unjust enrichment inapplicable when the relationship between parties is founded on a written agreement or express contract. But in the present case, having found that no legal contract bound the parties, it would be manifestly unjust to fail to consider appellant's claim on the ground that there might have been a contract or that the parties had attempted to enter into a contract.

Id. at 448-49.

EDS next argues that Plaintiff's equitable claims fail as a matter of law on their own lack of merit. In particular, EDS asserts that Plaintiff's at-will status bars any equitable claim of entitlement to the CLS commissions, that Plaintiff cannot show detrimental reliance on the alleged misrepresentations of EDS, that any reliance by Plaintiff was unreasonable, and that EDS was not unjustly enriched by discontinuing the CLS commission payments as of January 1996. All of the arguments raised by EDS are fact-specific and subject to dispute. Based on the Rule 56 submissions, the Court finds that genuine issues of material fact

exist with respect to these claims.

For the foregoing reasons, the Court will deny EDS's Motion for Summary Judgment in its entirety.[4]

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[4]EDS has filed Objections and a Motion to Strike Exhibits A, C, and D Attached to Plaintiff's Memorandum of Law. In deciding this Motion, the Court did not rely on the contested exhibits. Therefore, the Court will dismiss EDS's Motion to Strike as moot.IN THE UNITED STATES DISTRICT COURT
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**O R D E R**

**AND NOW,** this 27th day of April, 1998, upon consideration of the Motion for Summary Judgment by Defendant Electronic Data Systems Corporations (Doc. No. 17), Plaintiff's Response thereto (Doc. No. 18), and Defendant's Reply (Doc. No. 20), **IT IS HEREBY ORDERED** that

1. Defendant's Motion for Summary Judgment is DENIED in its entirety.

2. Defendant's Application to File a Reply Memorandum (Doc. No. 19) is GRANTED.

3. Defendant's Motion to Strike Exhibits A, C, and D Attached to Plaintiff's Memorandum (Doc. No. 21) is DISMISSED as moot.

An appropriate Order follows.

BY THE COURT:

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John R. Padova, J.